BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 130 *of* 1904-05.

Appellant		*Respondent*
Nanjundaiya, minor by guardian Kappaiya	*Versus*	Nanjamma.

Subject.

Appeal against the order of the Deputy Commissioner, Mysore District, directing the registry of the shanbhogi office of Mugur, T.-Narsipur Taluk, jointly in the names of the appellant and the respondent.

The facts of the case appear sufficiently from the following :—

Decision.

The appellant's father Nanjappa and the respondent's husband, Subbanna's father, Sreekantaiya, were the joint shanbhogs of the village of Mugur in the T.-Narsipur Taluk. A dispute having arisen between them as to how the duties of the office should be performed and the emoluments attached thereto enjoyed, the Deputy Commissioner passed an order in 1892 that "each of them should hold the office alternately every other year." Nanjappa appealed to Government, who, in Appeal No. 173 of 1892-93, disapproved of the order regarding the performance of the duties of the office by rotation and directed the Deputy Commissioner "to keep both the shanbhogs in office till the potgi settlement is made when only one shanbhog will be appointed, and to divide the duties between them as well as he can."

2. Sreekantaiya died shortly afterwards and was succeeded by his son Subbanna. In spite of the distinct order of Government quoted above, both Nanjappa and Subbanna seem to have continued to officiate by rotation both before and after the potgi settlement. These two persons died in May 1904 and June 1904, respectively. The former left several sons, of whom the appellant is the eldest, while the latter left only a sonless widow, to wit, the respondent. The appellant, who is now a minor, will shortly attain his majority. The Deputy Commissioner has conferred the office on both the appellant and the respondent and directed that they should perform the duties thereof by turns of five years each through gumastas. Dissatisfied with this order, the appellant has preferred the present appeal.

3. Under the rules and practice in force in Mysore, sonless widows can only be appointed to offices of this description in very exceptional cases. The present one is not such a case, since the other deceased officiator has left more than one son, to whose appointment there could be no valid objection. Moreover, the order of the Deputy Commissioner is clearly opposed to the direction contained in the Government Order of the 2nd December 1893 above referred to, under which only one shanbhog could be appointed for the village. The question is, not whether rotation has been ordered and is in force in certain other cases, but whether the present case is one in which such an arrangement is a proper one to make in spite of one of the claimants being a female and in contravention of an order already passed by Government. This question, Government have no hesitation in answering in the negative.

4. Under these circumstances, it is clear that the Deputy Commissioner's order cannot be supported. That order is accordingly set aside and the appellant directed to be appointed sole shanbhog.

Memo. No. R. 1375—588-04-70, *dated* 31*st July* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 822, dated the 28th March 1905.

Appeal No. 140 *of* 1904-05.

Appellant		*Respondents*
Eregowda, son of Pommegowda of Dowdabetta, Pavagada Taluk	*Versus*	1. Sanjeevagowda 2. Chikkalamma 3. Erakyatha. 4. Naga.

Subject.

Appeal against the judgment and decree of the Deputy Commissioner of the Tumkur District, affirming the order of the Assistant Commissioner dismissing as time barred the suit filed by the appellant, claiming the pateli office of Konanakurki village in the Pavagada Taluk, now in the possession and enjoyment of the 1st respondent Sanjeevagowda.

The facts of the case appear sufficiently from the following decision :—

Decision.

Pommegowda and Nagegowda were brothers. The former is alive, while the latter died in 1878. Between them both, they were enjoying either jointly or by turns the pateli office of the two villages of Konanakurki and Dowdabetta until the year 1868, when for administrative convenience, it was decided that Konanakurki should be allotted to Nagegowda and Dowda-

betta to Pommegowda. Neither of the brothers objected to this arrangement. Pommegowda is still in possession and enjoyment of the village allotted to him, namely Dowdabetta. Nagegowda enjoyed Konanakurki until his death, which occurred shortly after the date of the said arrangement. He was succeeded by his son Doddegowda who held the office until his death, which took place in the year 1878. The question then arose as to who should be appointed patel of Konanakurki. Doddegowda left no male issue. The names of certain persons, alleged to be his *gnatees* were mentioned, but ignored. Pommegowda was passed over on the ground that he was not sufficiently fit even for the charge of the one village of which he was already in possession. Doddegowda's widow practically renounced her *hak* and left it to Government to dispose of the vacancy in such manner as they pleased. Under these circumstances, the appointment of a stranger to the office, thus at the disposal of Government, became necessary. One Bheemegowda was considered an eligible person and was appointed accordingly. After holding the office for a little over two years he died in 1881. His adopted son, the present 1st respondent, then a minor, was at once appointed his successor. The 1st respondent attained his majority in 1886 and has since been in uninterrupted possession of the office. Pommegowda who, as already observed, is still alive, has throughout been apparently contented with the introduction of a stranger, as is evident from the fact that he has never once asserted a title of his own to the office for the past twenty-seven years, *i.e.*, since the date of Bheemegowda's appointment in 1878. His son, the present appellant, preferred a claim to the office for the first time in 1903. Both the Assistant Commissioner and the Deputy Commissioner have rejected the claim on the ground that it is barred by limitation. Hence this appeal.

2. Government hold that the conclusion arrived at by the Courts below is correct and that this appeal is not entitled to prevail. In the appeal memo, a great deal has been said about fraud and illegality, for which ascertion, however, there is absolutely no foundation. The fact remains that the appellant's father was superseded by a stranger so far back as in 1878 and that the arrangement was in force without protest either from the appellant's father or from the appellant until the year 1903. It is undoubtedly too late now for the appellant to successfully assert his title. At the hearing an attempt was made to show that the rejection of the claim should have been based on the non-accrual of the cause of action instead of on the ground of the bar of limitation. Government do not see the force of this contention. It is true that Doddegowda's widow is still alive, and that in the natural course and in the absence of other circumstances, the appellant and his father could not well claim the office during her life-time. But it must be borne in mind that the widow was passed over at her own instance, and that if the appellant or his father had a right to come in, that right accrued to them at once, *i.e.*, in the year 1878. The office was lost to the family in that year and could not revert to it either now or after the demise of Doddegowda's widow.

3. For these reasons, Government uphold the decisions appealed from and direct the dismissal of this appeal.

Memo No. R. 1390—*Mis.* 768-04-4, *dated Bangalore,* 31*st July* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 865, dated the 27th May 1905.

Appeal No. 127 *of* 1903-04.

Appellants

1. Sivaramappa
2. Narnappa
3. Seshappa

} Minor sons of Lakshmappa by guardian Mahishi Manjappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Shimoga District, dated July 1903, directing the recovery from the appellants of the assessment from 1898-99 of Survey No. 67 of Mallapur village in the Shimoga Taluk, purchased by the appellants' father Lakshmappa at a revenue sale held on 30th November 1898.

The facts of the case appear sufficiently from the following:—

Decision.

Survey Nos. 67 and 59 were sold for the arrears of kandayam due thereon and were knocked down to the appellants' father Lakshmappa (since deceased) for Rs. 66 and Rs. 14 respectively. Written intimation of the confirmation of the sale was given to the purchaser in February 1899, but he was not put in possession of Survey No. 67 which was under crop at the time, though he repeatedly applied to the authorities. The purchaser fully paid up the sale amount, but was required to pay the assessment for 1898-99 also. No action was, however, taken to put him in possession of land No. 67 until 1902, when both the numbers were sold for the arrears of kandayam due for three years, amounting to Rs. 186-13-0. For want of bidders the lands were bought in by Government for one pie. The Assistant Commissioner who enquired into the case was of opinion that the 2nd sale should be cancelled as the appellants or

their deceased father had not been put in possession of land No. 67, while the arrears due on land No. 59 had been fully paid up. But the Deputy Commissioner differed from the Assistant Commissioner and held that the appellants were responsible for the payment of the arrears on the lands in question as the purchaser had been duly informed of the confirmation of sale. The Government consider that a mere intimation of confirmation of sale was not tantamount to a delivery of possession, that there is nothing to show that land No. 67 was ever taken possession of and enjoyed by the purchaser and that consequently the Deputy Commissioner's order is incorrect. They accordingly direct that the land (Survey No. 67) should be restored to the appellants without any liability for the payment of the arrears that had accumulated thereon, (*viz.* No. 67) during the three years they were not in possession thereof.

No. R. 944—P. F. 281 of 1903-04, dated Bangalore, 5th August 1904.

Copy of the above is forwarded to the Deputy Commissioner, Shimoga District, together with the vernacular records received with his letter No. 569—374, dated the 14th April 1904.

Appeal No. 123 of 1903-04.

Appellant	*Versus*	Respondent
Cheluvaraya Mudaliar		Ramaiya.

Subject.

Appeals against the order of the Deputy Commissioner of the Bangalore District, recognizing the claim of the respondent to the pateli office of the Kayamgutta Byappanahalli village in the Bangalore Taluk, and disallowing the nomination made by the appellant Kayamguttadar.

The facts of the case appear sufficiently from the following :—

Decision.

The pateli is not a hereditary office in this village, nor are there any Inam lands or other emoluments attached to it. It would appear that the Kayamguttadar himself through his agent used to perform the duties of the office for some time. By a Sannad dated 17th July 1880, the Deputy Commissioner appointed one Munivenkatappa to the office "on behalf of Tiruvengadasami Mudaliar (Kayamguttadar)." This, in the opinion of Government, was a personal appointment which could not, and did not, create a hereditary hak in favor of the family of the holder of the Sannad. Munivenkatappa having died in 1902, the Kayamguttadar asked for permission to make his own nomination of a successor subject of course to confirmation by the Deputy Commissioner. This application was resisted by the respondent, who is a son of the deceased patel and who contended that he was himself entitled to succeed to the office by right of inheritance. The Assistant Commissioner overruled the respondent's objection while the Deputy Commissioner allowed it. Hence this appeal.

2. The view taken by the Deputy Commissioner of the rights of the respondent and of the law relating to the hereditary principle, seems to Government to be incorrect. Where there is a hereditary patel his legal heir cannot be passed over in the absence of valid grounds, but where, as in this case, the office is not hereditary, a person once appointed to it cannot *ipso facto* assert a right to transmit it to his heirs in spite of the Inamdar's opposition. The death of Munivenkatappa has caused a vacancy which the Kayamguttadar is competent to fill up by making an appointment acceptable to himself and agreeable to the Deputy Commissioner. The authority quoted by the Deputy Commissioner presupposes the existence of a hereditary office and a hereditary hak and cannot be held to apply to a case like the present where no such office and hak exist.

3. The order appealed from is set aside and the Deputy Commissioner directed to deal with the office in question in accordance with the above observations.

No. R. 1236-306—6, dated Bangalore, 12th August 1904.

Copy of the above is forwarded to the Deputy Commissioner of the Bangalore District, together with the records received with his letter No. 828, dated the 15th March 1904.

Appeal No. 47 of 1904-05.

Appellant ... Kaveramma by her agent Gururayachar.

Subject.

Claim of the appellant to a tract of land in the State Forest adjoining her jodi village of Kuppachar Roppa in the Maddagiri Taluk, complained of as having been encroached upon by the Forest Department.

The facts of the case appear sufficiently from the following :—

Decision.

Kuppachar Koppal (or Roppa) is a jodi village granted to one Kuppachar in the year 1813. In 1856, there was a dispute regarding some land alleged to belong to the said Koppal but encroached upon by the inhabitants of certain adjoining villages. An enquiry was held and the jodidar's complaint admitted and redressed by an order of the Superintendent of the

372

Division, dated 19th March 1859. The village was surveyed and bandhs fixed by the Revenue Survey Department in 1870. All the land included within the boundaries mentioned in the Division Superintendent's order of 19th March 1859 was then held to belong to the village in the absence of any objection—private or departmental. It would appear that shortly before the Revenue Survey, *i.e.*, in the year 1868, a State Forest was ordered to be constituted in that locality and duly notified in the Official Gazette, but that notification did not either give the area of the forest or describe its boundaries, nor are the papers relating to that forest settlement forthcoming. Shortly after the Revenue Survey, *i.e.*, in September 1870, the village came under the operation of the Inam Settlement. The Inam Department recognised the title of the then jodidar (Ramachar, son of the original grantee) to the whole of the land claimed by him and enclosed within the boundaries mentioned in the Division Superintendent's order of 1859 and affirmed by the bandhs fixed at the Revenue Survey. In the following year there was some correspondence between the Inam Commissioner and the Conservator of Forests as to the circumstances under which the latter had added on a portion of the lands of the said village and of certain other villages, to the forest which apparently was then in the process of formation. The entire correspondence on the subject is not forthcoming; but the facts which then transpired can be easily and correctly ascertained from the copy of the Conservator's letter to the Inam Commissioner, dated 3rd May 1871, and from the Inam Special Assistant's postscript to the Inam Register, dated 20th January 1872, and the Inam Commissioner's order thereon, dated the 29th idem. These papers show that this jodidar, among others, complained to the Inam Commissioner that a portion of his land had been unauthorisedly taken up by the Forest Department. The Conservator, on being asked, replied that the action taken by him was fully justified by the agreements he had obtained from the jodidars concerned, one of whom was named Venkatalakshamma. In the result the Inam Commissioner held that the holder of the village in question was not a party to the agreements relied upon by the Conservator and that therefore he was entitled to hold his jungle unmolested subject to the usual restrictions as to the felling of teak and sandal, and the transport of other trees felled. The Topographical Survey of this part of the State took place in 1878-79. The forest which by that time had presumably assumed a somewhat definite shape, was shown by dotted lines in the Topo-Survey map (old sheet No. 36 corresponding to present sheet No. 104) and in this are included the southern and western portions of Kuppachar Koppal to the extent of about 100 acres. There is absolutely nothing in the record to show that the jodidar was a consenting party to the inclusion. Notwithstanding a subsequent notification of 1883, which like its predecessor did not give the area, it became necessary in 1898, owing to certain doubts and inaccuracies which existed, and certain rights and privileges which were being indiscriminately exercised, to revise the Forest Settlement and place it on a more satisfactory basis by the promulgation of a fresh notification, which accordingly at the instance of the Conservator of Forests, was issued by Government on 5th August 1898. No lands belonging to Kuppachar Koppal found a place therein, the tract in question having apparently been regarded as taken from certain adjoining Government villages. In giving effect to this notification and to the orders accompanying it, the local authorities seem to have for the first time openly asserted the right of the Forest Department to hold the said tract as against the jodidar (Ramachar's son Srinivasachar's widow Kaveramma) and to prevent the cattle of the Koppal from grazing thereon otherwise than by the payment of a fee. Her title having thus been repudiated, Kaveramma preferred a complaint to the Assistant Commissioner in February 1902, and subsequently followed it up by numerous other petitions of protests. Local inspections and enquiries clearly supported Kaveramma's assertion that the tract in dispute formed part of her village. On the ground, however, of the jodidar having remained quiet for some thirty years after the inclusion of the tract within the forest limits, the Deputy Commissioner came to the conclusion that Kaveramma's contention was untenable. Kaveramma (petitioner and appellant) questions the correctness of this conclusion.

2. The Conservator of Forests is apparently not inclined to entertain the appellant's claim, and he lays great stress on the Forest Settlement of 1868 and the Topographical Survey of 1878-79, as also on the long existing demarcation line. The Survey Commissioner on the other hand observes that when the Revenue Survey operations were being carried out in 1870-71, no trace of the forest said to have been constituted in 1868 was met with in the Koppal or any Government villages concerned, that no demarcation line was observed by any of the measurers, nor was the existence of a forest brought to notice although the usual formalities were followed when fixing the boundaries of Kuppachar Roppa and all other villages, that the Ferist of the Maddagiri Taluk does not show a single forest in that taluk, that as regards the claim now made by the inamdar of Kuppachar Roppa, the boundary of the village (with which the Topo Survey has no jurisdiction) was, in the absence of any representation by the Forest Department, correctly fixed and that as a question of boundary legally laid down there is no doubt that the Revenue Survey boundary is correct. Colonel Grant further refers to the correspondence of 1871 as clearly showing that the Conservator knew that he was taking his line through the jodidar's lands. He adds that he does not know what the agreement was between the Conservator of Forests and the jodidar. In this connection, Government note from the remark under the Inam Register that neither this jodidar nor any person authorised by him was a party to any of the agreements obtained by the Conservator. Colonel Grant concludes by giving his opinion that the jodidar is entitled to some compensation.

3. Having considered the case in all its bearings, Government are of opinion that the appellant has a valid grievance and that her claim cannot be rejected on the grounds stated by the Deputy Commissioner and the Conservator of Forests.

4. It cannot be seriously contended that the tract under advertence does not belong to the jodi village or that the jodidar surrendered it to the Forest Department by a mutchalika. In reporting upon the petitioner's complaint the Forest Range Officer stated *inter alia* that "the demarcation line runs about a furlong from the boundary line between the jodi village and the adjoining Government village lands of Kammankote and Hosahalli now included in the State Forest, encroaching upon the jodi lands as shown in the sketch plan submitted," that "the demarcation line *appears* to have been cut *some time after* 1868," that "it is not possible to ascertain why the line was not then cut along the boundary as shown in the village plans," and that "the complaint is no doubt reasonable." He adds that the extent of jodidar's land thus included in the forest is about 100 acres. The Assistant Commissioner reports *inter alia* that "a perusal of these (sketch maps) will show that there is some encroachment on the part of the Forest Department." He points out the difference between the village boundaries at the demarcated limits and observes:—"By taking the line as described above, the bamboo-grown area to the west of Oodubetta hills will have to be excluded. There are about 2,000 bamboo clumps within the area;" again "if the village boundaries are adopted, the strip of land described above, about 100 acres in extent, will have to be given up;" lastly "there is no doubt that about 100 acres of the jodi village in question has been encroached upon." The Assistant Commissioner was, however, not satisfied with the petitioner's explanation of the delay in advancing this claim. The District Forest Officer while urging, as circumstances militating against the jodidar's claim, the Forest Settlement of 1868, the broad line cut *probably* in the year 1868 when the original State Forest *appears* to have been constituted, and the Topographical Survey Map of 1878-79, observes thus: "In all probability, Kuppachar Roppa lands also have been included in the forest at the time of the settlement of the forest, but no alienation statements of lands taken up for the formation of the forest are forthcoming here to throw any light and clear up the matter." The Deputy Commissioner and the Conservator of Forests do not altogether differ from the Ranger and the Assistant Commissioner or consider that the 'probability' admitted by the District Forest Officer is devoid of foundation. The recognition of the jodidar's title first in 1859 by the Division Superintendent, then by the Survey Department in 1870, and lastly by the Inam Department both in 1870 and 1872, have already been referred to. The evidence thus is all one way and its cumulative effect is to show beyond the shadow of a doubt that the appellant's title is wholly incontrovertible except possibly on the ground of herself and her predecessors in title having knowingly slept over their rights for a considerable period.

5. On the point last mentioned, Government hold that the circumstances of the cases are not such as to preclude the appellant from now successfully asserting her title. The Forest Settlement of 1868 was more nominal than real. An attempt at something like the formation of the forest seems to have been made some two or three years after. But private rights and interests were not fully enquired into or acquired or compounded with, and as regards this particular village there was a distinct pronouncement by the Inam Department, as the result of a correspondence with the Forest Department, that the jodidar's rights were in no way to be interfered with. This is a hilly tract and consists mostly, if not wholly, of unculturable land, the only way in which it could be used being as pasture land. When the demarcation line was first cut, is a question regarding which the evidence is meagre, vague and inconclusive, but it would appear that the line in this remote corner was never so prominently in evidence as to warn the jodidar that this title was in danger. In spite of Topo boundaries, considerable uncertainty prevailed until 1898 as to which areas and of what extent constituted the forest, and as to which villagers possessed and enjoyed what rights and privileges in the so-called forest. The correspondence which led to the revised settlement of 1898 shows clearly that everything connected with the forest was till then in a state of great confusion. That being so, there is no foundation for the assumption that the jodidar of this Koppal was ever cognizant of his pasture lands having been dealt with as a part of the forest. There is no allegation, much less proof, that his people were ever excluded from the enjoyment of the pasturage; in other words, that their cattle were ever impounded, or expelled, or charged a grazing fee. In short, there was no adverse act of any kind on the part of the forest authorities, and a jodidar remained therefore in fancied security. That being so, it is unfair to the jodidar to accept the paper settlements of the period prior to 1898 as conclusive proof of possession hostile to him. As soon as the appellant found that her title was impunged, and her cattle refused free grazing as before, she lost no time in coming forward with her claim, and this shows that there was no want of reasonable diligence on her part.

6. From the above observations, it is evidently clear that the land (extent 100 acres) in question is the property of the appellant, that it was improperly taken away from the Koppal and added on to the State Forest, that the Inamdar was not aware of this until shortly before the date of her complaint, that till then there was no over tact by the Forest Department calculated to excite her suspicion nor interference of any kind with her enjoyment as usual, and that the land should now be restored to her, leaving it to the Forest Department to acquire it from her in due course if its inclusion in the forest is deemed desirable. Compensation would not be an appropriate remedy in a case like this where restitution has been rightly

claimed and where subsequent acquisition either by private negotiation or by a resort to the machinery provided by law for the purpose, is quite feasible.

Memo No. R. 2275-6—*Ft.* 18-03-9, *dated Bangalore, the* 19*th August* 1905.

Copy of the above is forwarded to—

(1) the Conservator of Forests in Mysore, with reference to the correspondence ending with his letter No. 6447, dated the 24th March 1905,

(2) the Deputy Commissioner of the Tumkur District, together with the records received with his docket No. 74, dated 1st August 1904.

Appeal No. 152 *of* 1904-05.

Appellant	*Versus*	Respondent
Subbe Gowda		Gurunanjaiya.

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District directing the appointment of the petitioner's son to the pateli office of the Mangala village in the Chamrajnagar Taluk, on the score of old age and incompetency of the petitioner; and declining to allow the claim of the petitioner or his son to be appointed as patel of the dakle villages as well, attached to the said Mangala village, in preference to the respondent, who is the nominee of the inamdars of the dakle villages.

The facts of the case appear sufficiently from the following—

Decision.

There are several hamlets or dakle villages attached to the Inam village of Mangala. In 1878, with the consent of the inamdar the appellant was for the first time appointed patel of Mangala. Some time afterwards there was a division between the several members of the inamdar's family, under which Mangala fell to the share of one member and the dakle villages to that of two others. The latter repudiated the right of the appellant to officiate as patel of their villages and proceeded to make their own arrangements. One Nanje Gowda acted for a few years and then Basavarajiah. The latter having been removed, the question arose as to who should be appointed in his place. The appellant's claim has been rejected and the respondent appointed at the instance of the inamdars concerned. The appellant admits that he has no hereditary right, and yet he contents that he is a hakdar and should have been preferred to the respondent. This contention is manifestly inadmissible. The appointment of separate patels for several villages and hamlets clubbed together at the Survey Settlement being, in exceptional cases, contemplated by standing orders (*vide* Proceedings of Government No. 10267-75- R. 1055, dated the 3rd January 1894), the appellant's further contention that the order appointing the respondent is opposed to the rules, likewise fails.

For the above reasons, Government hold that this appeal is not entitled to succeed. Rejected accordingly.

Memo No. R. 3483—*Mis.* 693-04-4, *dated Bangalore,* 15*th September* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District together with the vernacular records received with his letter No. 1167, dated the 20th June 1905.

Appeals Nos. 149 *and* 150 *of* 1904-05.

Appellants		*Versus*	Respondent
Appeal No.	149	... Sitaramjetti	
Do	150	... Nanjaraj Urs, Mallappaji Urs, & other residents of Amachavadi in the Chamrajnagar Taluk	Subbi

Subject.

Appeals against the order of the Deputy Commissioner of the Mysore District directing the registry of the pateli office of Amachavadi village in the name of Subbi (respondent), daughter of the previous dismissed patel, and the payment by Sitaramjetti (patel gumasta) of one-fourth of the potgi for the maintenance of the said minor registerdar Subbi.

The facts of the case appear sufficiently from the following :—

Decision.

In this case there are two appeals one from the inhabitants of the village of Amachavadi and the other from one Sitaramjetti who has been appointed to act as patel gumasta of that village subject to the payment of one-fourth of the potgi allowance to the respondent Subbi.

One Puttamada Naik was temporarily appointed patel in 1888. In 1900 he was confirmed by the Assistant Commissioner. In 1903 he was dismissed on account of certain misconduct. The office is thus not a hereditary one, and yet the Deputy Commissioner has conferred it on the dismissed patel's minor daughter. To this the villagers object. Sitaramjetti, who has been appointed gumasta, declines to act unless he is made independent of the respondent and is given the whole potgi for his own benefit Neither Sitaramjetti nor the villagers have any *locus standi*, but at the same time it must be observed that in the absence of a hereditary right, the appointment of the minor Subbi (respondent) made by the Deputy Commissioner is open to objection. What the Deputy Commissioner ought to have done was to make an unexceptionable arrangement for the satisfactory performance of the duties of patel.

With these observations both the appeals will be rejected.

Memo No. R. 3494—*Mis.* 464-04-8, *dated Bangalore, the* 15*th September* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 691, dated the 22nd February 1905, and No. 758, dated the 13th March 1905

Appeal No. 1 of 1905-06.

Appellant	*Versus*	Respondent
Ramakrishnaiya (Plaintiff)		Ramanna (Defendant)

Subject.

Claim to the shanbhogi office of Hulikere and Bellur villages in the Mandya Taluk.

The facts of the case appear sufficiently from the following:—

Decision.

This appeal arises out of a claim preferred to a half share in a shanbhogi office. The office is a hereditary one and stood registered first in the name of one Dasappa and then in that of his eldest son Subbanna. The defendant (respondent) is the son and the plaintiff (appellant) the younger brother of the said Subbanna. After the death of Subbanna, which occurred in the year Dhatu or Iswara, the respondent was appointed to the office which accordingly was transferred to his name. During his minority his undivided uncle, the appellant, was discharging the duties of the office until 1893, when he vacated it in his (respondent's) favor. The latter has since been in possession. Relying upon a partition deed dated August 1895, the appellant sued to have his right established to share the office with the respondent by a quinquennial rotation. The suit was resisted on the ground that the arrangement relied upon was illegal and inoperative and that as the representative of the elder branch of the family the respondent alone was entitled to continue to be in possession and enjoyment of the office. The Assistant Commissioner decreed the suit while the Deputy Commissioner dismissed it. Hence this appeal.

2. In the usual course the office was transmitted from Dasappa to his first son Subbanna and from the latter to his son, the respondent. The latter's succession was duly recognised. The office of shanbhog is not a property divisible by private arrangement. The partition on which the suit is based cannot therefore be given official countenance and sanction. Rotation moreover cannot be ordered in every case irrespective of its merits. This is an ordinary case of coparceners and not an exceptional one presenting any special features or involving any peculiar hardship, and Government must therefore hold that the appellant's prayer is not entitled to succeed.

3. The Deputy Commissioner's decision is accordingly affirmed and this appeal rejected.

Memo No. R. 4961—*R. M.* 791-04-6, *dated Bangalore, the* 25*th October* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letters Nos. 9 and 212, dated, respectively, the 4th July and 22nd August 1905.

Review Application No. 1 of 1905-06.

Petitioner	*Versus*	Counter-petitioner
Gobbira Siddakka (appellant)		Manja (repondent)

Subject.

Petition praying that her appeal in regard to the registry of land Survey No. 31 of Palavanhalli, Honnali Taluk, which was dismissed for default of prosecution, may be restored to file and disposed of on merits.

Decision.

The land in question was originally in the khate of the appellant's husband who transferred it to the Honnali Gold Mining Company. Under an arrangement with the Company, however, possession remained first with him and after his death with his widow under whom the respondent as a sub-tenant has for a few years past been cultivating the land. In other words, the

appellant was a sub-holder under the Company, and the respondent was a tenant under her. The Company having relinquished the land along with a number of other lands, it had to go back to the original holder under the Proceedings of Government No. 7590-91—R. 2631, dated the 23rd March 1901. The word "possession" in the order must be taken to mean "possession" by a tenant under the Company and not by a sub-tenant under that tenant. The respondent never denied his position of subordination to the appellant, nor did the latter ever ask that that position be converted into one of co-ordination. The Assistant Commissioner nevertheless ordered the land to be registered in the joint names of both appellant and respondent, and this order was upheld in appeal by the Deputy Commissioner. Government are of opinion that the appellant, both by law and by right, is entitled to have the registry made out in her sole name, and that the respondent's name, which has been erroneously brought on the register of occupants, must now be removed from it.

Ordered accordingly.

Memo No. R. 5012—*Mis.* 769-04-4, *dated Bangalore, the* 25*th October* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Shimoga District, together with the records received with his letter No. 42-30, dated the 12th July 1905.

Appeal No. 16 *of* 1905-06.

Appellant	*Versus*	Respondent
Chikka Ankegowda		Chikka Kempegowda.

Subject.

Claim to the pateli office of Bhimanahalli village in the Nagamangala Taluk.

The facts of the case appear sufficiently from the following—

Decision.

The case relates to the pateli of Bhimanahalli of the Nagamangala Taluk. For some fifty years, this office was in the name and enjoyment of one Dodda Ankegowda, son of Chikka Kempegowda, who had another son named Javaregowda, whose son is the respondent Chikka Kempa. The appellant is Chikka Kempegowda's brother Madegowda's son. The respondent's alleged adoption by Dodda Ankegowda has not been established. The relationship then is this, *viz.*, the appellant is Dodda Ankegowda's father's brother's son while the respondent is his own brother's son.

2. In 1885, Dodda Ankegowda who was getting old and infirm, requested that the office be transferred to the name of the appellant whom he called his brother but who, as a matter of fact, was only his cousin, being his paternal uncle's son. Another son of his brother Javaregowda, that is, a brother of the respondent, name Kada, objected to the said transfer on the ground that he was more nearly related to the registerdar than the appellant. The matter was under correspondence until 1892, when Dodda Ankegowda withdrew his application with due permission. He continued in office for a year more and then died in 1893. In spite of the appellant's protest, the respondent was appointed to succeed the deceased. The appellant appears to have appealed to the Deputy Commissioner from the arrangement ordered by the Sub-Division Officer, but there is nothing to show what became of the appeal. In 1903, that is, some ten years after the appointment of the respondent, the appellant instituted a suit for the establishment of his own title to the office and for the removal of the respondent from it. The suit failed both in the Assistant Commissioner's Court and in that of the Deputy Commissioner. Hence this second appeal.

3. There is an allegation that the appellant is the adopted son of his grand-father's brother's son Javaregowda, to whom the office is said to have originally belonged and on whose behalf Dodda Ankegowda was doing the duties of the same. That the office ever belonged to the appellant's alleged adoptive father or that Dodda Ankegowda ever held it under him as a gumasta, has not been proved. Another adoption is referred to in the papers in the file, *viz.*, that of Doda Ankegowda by an uncle of his of the same name. If these adoptions are true, then the relationship between the parties would be thus: the respondent would be the registerdar's father's brother's grandson, while the appellant would be the registerdar's grandfather's brother's grandson.

4. For the proper understanding of the case, a genealogical tree is attached.

5. That the registerdar's application of 1885 amounted to a relinquishment of the office in favour of the appellant, is a contention which the Government decline to accept. Not only was no private transfer admissible unless duly officially recognized, but it is also evident that the request regarding the transfer was withdrawn before final orders could be passed. The proceedings of 1885 to 1892 cannot therefore be successfully relied upon by the appellant as substantiating his title.

6. If there were no adoptions, the respondent was undoubtedly more nearly related to Dodda Ankegowda than the appellant. Likewise, if the adoptions were true there was the same propinquity entitling the respondent to succeed in preference to the appellant. The latter cannot ask that his own adoption be ignored and Dodda Ankegowda's adoption alone

taken into account. The probabilities are that the term "adopted son" has been loosely used in the case of both and that one of them was fostered by Javaregowda and the other by Dodda Ankegowda. However that may be, and whether there were adoptions or no, the fact is clear that the appellant is not entitled to be preferred to the respondent.

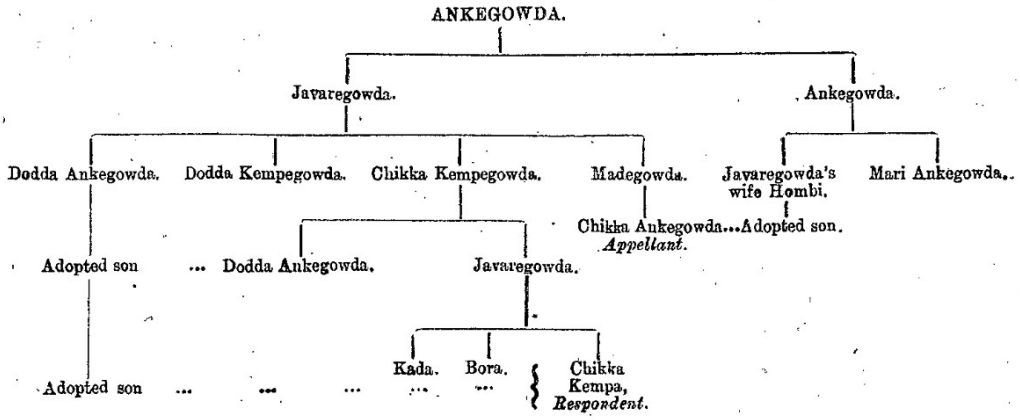
7. It is a question whether the suit itself was maintainable in the face of the Sub-Division Officer's order of 1893, which was not set aside either in appeal or in revision and which therefore stands good. Government, however, do not propose to go into this point as they find that on the merits the appellant's claim is wholly unsustainable.

8. The appeal fails and is dismissed.

Memo No. R. 5178-85—*R. M.* 67-05-4, *dated Bangalore,* 30*th October* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 140, dated the 7th August 1905.

By Order,
B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.



375